

**FIRST AMENDMENT TO SITE PLAN ENFORCEMENT AGREEMENT**

This First Amendment by and between RSC Tower II, LLC ("Applicant"), and the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission ("Planning Board"), is effective the date signed by the Planning Board.

WHEREAS, pursuant to § 59-D-3.3 of the Montgomery County Code ("Code") the Applicant and the Planning Board, entered into a Site Plan Enforcement Agreement dated May 3, 2005 for Site Plan No. 8-04017 (the "Original Agreement"); and

WHEREAS, Site Plan No. 8-04017 was subsequently amended by the Planning Board, with such amendment by designated Site Plan No. 8-04017A; and

WHEREAS, on October 12, 2006, the Planning Board approved a limited amendment to Site Plan No. 8-04017A designated Site Plan No. 82004017B (the "Site Plan Amendment"); and

WHEREAS, the parties desire to amend the Original Agreement so that it is consistent with the Site Plan Amendment.

NOW THEREFORE, in consideration of the mutual promises and stipulations set forth herein and pursuant to the requirements of § 59-D-3.3 of the Code, the parties hereto agree as follows:

1. Paragraph 1 of the Original Agreement is deleted in its entirety and replaced with the following:  
  
"The Applicant agrees to comply with all of the conditions set forth in the Planning Board's Opinion dated \_\_\_\_\_, \_\_\_\_\_, and to execute all of the features of the approved Site Plan Amendment designated Site Plan No. 82003036B including all features noted in §59-D-3.23, in accordance with the approved Development Program required by §59-D-3.23(m), attached and incorporated herein by reference."
2. This Agreement is binding on the Applicant, its successors and assigns, and on the land and improvements in perpetuity or until released in writing by the Planning Board.
3. Exhibit "A" attached to the Original Agreement is deleted in its entirety and replaced with Exhibit "A", attached and incorporated herein by reference.
4. Exhibit "A-1" attached to the Original Agreement is deleted in its entirety.

IN WITNESS WHEREOF, the parties hereto have set our hands and seals as of the date and year set forth below.

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Montgomery County Planning Board  
of The Maryland-National Capital Park  
and Planning Commission

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Date

By: *Richard W. Hrycyk*  
RSC Tower II, LLC  
*Authorized Person*

## EXHIBIT "A": DEVELOPMENT PROGRAM

**Site Plan No. 82004017B**

**Site Plan Name: Rock Spring Center- Residential Tower II**

THE PROJECT WILL BE DEVELOPED IN 1 PHASE AS SET FORTH IN THIS DEVELOPMENT PHASING PLAN. DEVELOPER RESERVES THE RIGHT TO ADJUST THE NUMBER OF PHASES OR THE SEQUENCE OF PHASING, PROVIDED DEVELOPMENT IN EACH PHASE PROCEEDS IN ACCORDANCE WITH THE ELEMENTS SET FORTH BELOW. ADJUSTMENT TO THE NUMBER OF PHASES OR SEQUENCE OF PHASING IS SUBJECT TO THE APPROVAL OF PLANNING BOARD STAFF. INFRASTRUCTURE AND AMENITIES FOR EACH PHASE TO BE PROVIDED IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 1, REGARDLESS OF WHICH PHASE OF THE DEVELOPMENT PROCEEDS FIRST.

Phase	Units in Phase	MPDUs <sup>1</sup>	Common Areas in Phase	Local Recreational Facility in Phase	Community-Wide Recreational Facility	Plat Recordation Due date for Phase	Begin Construction of Units	Complete Facilities
I	352	32	All	All	N/A	By 11/25/06	By 10/25/11	See Section II

I. A. Applicant will complete the following site plan elements prior to 70% occupancy of units constructed in the Project.

1. Paving of parking areas (excluding final topping)
2. Sidewalks (on-site)
3. Lighting (street and parking lot)
4. Grading
5. Landscaping (adjacent to building(s))
6. Foundation landscaping
7. Pedestrian pathways (on-site)
8. Recreation facilities (on-site)
9. Fences or noise berms

B. Applicant will complete the following site plan elements prior to full occupancy of the Building.

1. Parking lot and perimeter landscaping
2. Final topping of parking areas

<sup>1</sup> Per May 25, 2004 Alternative Agreement under Section 25A with Montgomery County as amended by Amended Alternative Agreement Under 25A dated January 11, 2005, 32 MPDUs are required in this Phase; additional required MPDUs will be provided in subsequent residential Phases of Rock Spring Centre.

- C. Street tree planting must progress as street improvement is completed, but no later than 6 months after completion of the building.
- D. Inspection Schedule: Applicant shall send written notice to M-NCPPC's Inspection Unit to initiate scheduling of site inspections at the following milestones:
  - 1. Applicant shall conduct a preconstruction meeting with M-NCPPC staff and MCDPS sediment control staff prior to clearing and grading.
  - 2. At 70% occupancy.
  - 3. At 100% completion.

II. Local Recreational Facilities

The Local Recreational Facilities, including all required improvements and associated Common Area for the Project, shall be completed by the earlier of:

- 1. The date of seventy percent (70%) occupancy of the units planned within the Project; or
- 2. 36 months from the date of receipt of the initial building permit for a lot or unit in the Project.

III. General Provisions

- A. Applicant must construct all Recreational Facilities within the timeframes contemplated in the Phasing Schedule and in these binding elements. Applicant must arrange for inspections by staff to ensure that all facilities are timely, correctly, and completely constructed.
- B. All Local Recreational Facilities shall be designed and constructed in accordance with Parks Department standards and criteria and M-NCPPC's adopted Recreational Facilities Guidelines.
- C. Applicant shall warrant that all facilities have been constructed in a good and workmanlike manner and are fit for each of their intended purposes.
- D. The Applicant may seek an amendment to any regulatory approval for the purpose of modifying the improvements to be constructed, including, but not limited to, the right not to construct such improvements, which amendment shall be reviewed by the Planning Board in accordance with applicable law. Such amendment shall be effective only if approved by the Planning Board.

- E. The required bus shelters and proposed sidewalk to Old Georgetown Road shall be installed prior to occupancy of the first unit of the subject apartment tower unless otherwise approved by M-NCPPC staff or amended by the site plan approval for the remaining portion of Rock Spring Center.
- F. Clearing and Grading to correspond to the construction phasing, to minimize soil erosion and forest loss.
- G. All sidewalks, pathways, landscaping, outdoor lighting, and recreation facilities shall be completed prior to issuance of any occupancy permit for the proposed building.